

## REMARKS/ARGUMENTS

Claims 1-6, 8-12 and 16-21 are presently pending in the application as set forth in the Preliminary Amendment C filed September 18, 2007.

Claims 7 and 13-15 were previously cancelled without prejudice to filing a continuation with respect thereto.

Claims 12 and 19 stand withdrawn as being directed to a non-elected species.

In this communication, no claims have been amended, canceled or added.

In this action, the Examiner issued a *second* restriction requirement as follows:

Group I Claims 1-6, 8-11, 20 and 21 as being "drawn to a retaining wall, classified in class 182, subclass 113"

Group II Claims 16-18 "drawn to an attachment assembly, classified in class 249, subclass 40."

Applicants respectfully traverse the restriction requirement and submit that the restriction requirement is not proper. In support of this, Applicant notes that this restriction requirement is identical to the first restriction requirement (issued on March 8, 2007). In support of the present restriction requirement, the Examiner stated:

"Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require a strap fitting over a standoff dowel. The subcombination has separate utility such as an attachment for wedging a pair of wooden plank together."

Except for the underlined verbiage, this statement is identical to the statement

made in support of the first restriction requirement. The underlined verbiage was not present in the justification for the original restriction requirement. In response to the first restriction requirement, Applicant elected Group II (Claims 13-19, as set forth in that restriction requirement) and amended the claims. In response to the amendment filed with the restriction requirement, the Examiner withdrew only Claims 12 and 19.

In a call with the Examiner, the Examiner asserted that the addition of new Claim 21 in the amendment filed September 18, 2007 effectively mooted the prior restriction requirement, thereby requiring entry of this new restriction requirement. Applicant, however, notes that new Claim 21 is a dependent claim which depends from Claim 3 and sets forth features of the attachment assembly mounting portion and the gravity pin.

Applicant points out that Claim 1 is directed to a retaining wall fall protection system including an attachment assembly. Claim 16 (the other independent claim) is directed to the attachment assembly itself. The attachment assembly as set forth in Claim 1 includes all the elements as the attachment assembly as set forth in Claim 16. With respect to the Examiner's distinction (noted above), Applicant notes that Claim 1 states that the "attachment strap [is] connected at said first end to said stand-off assembly". Claim 16, on the other hand provides the attachment strap includes "an eyelet in said first end sized and shaped to fit over said standoff assembly attachment dowel". Thus, Claim 16 defines the attachment strap more narrowly than Claim 1. Because Claim 16 includes the attachment assembly of Claim 1, Applicant respectfully asserts that Claim 16 is not a subcombination of Claim 1.

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Applicant therefore requests that the Examiner withdraw this restriction requirement and continue examination of the application with the claims as set forth above. Should the Examiner refuse to withdraw the current restriction requirement, Applicant elects to proceed with Group II, Claims 16-19.

As discussed in the Amendment C of September 18, 2007, the claims as set forth above are believed to be in condition for allowance. Issuance of a Notice of Allowability with respect to these claims is respectfully requested.

You are hereby authorized to charge payment of an extension fee associated with this communication or credit any overpayment to Deposit Account No. 162201.

Respectfully Submitted,

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